

² The Board notes that, following the February 11, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal. 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met his burden of proof to establish Valley Fever causally related to the accepted factors of his federal employment.

FACTUAL HISTORY

On February 2, 2018 appellant, then a 54-year-old distribution process worker, filed an occupational disease claim (Form CA-2) alleging that he sustained Valley Fever causally related to factors of his federal employment, including working outdoors in a dusty environment “where the nearby area of land is stirred up and known to be infected with the Valley Fever fungus.” He stopped work on October 30, 2017.

On January 29, 2018 Dr. Aarthi Chary, a Board-certified internist, related that he was treating appellant for a severe form of disseminated coccidioidomycosis and a pulmonary embolism likely caused by the condition. He advised that appellant had been hospitalized on multiple occasions beginning October 20, 2017 due to this condition. Dr. Chary advised that appellant was disabled from employment through at least March 2018.

In a statement dated January 31, 2018, appellant related that he worked in warehouses with open bay doors. He related that the area was windy and that there was a significant amount of farming in the area and construction at the depot. Appellant claimed that such activities disturbed the soil, which contained the Valley Fever fungus. He asserted that he had developed disseminating Valley Fever from breathing dusty air while at work.

In a development letter dated February 5, 2018, OWCP advised appellant of the factual and medical evidence necessary to establish his claim, including a detailed description of the employment activities that he believed caused or contributed to his condition and a medical report explaining how the identified employment factors resulted in a diagnosed condition. It provided a questionnaire for his completion. OWCP afforded appellant 30 days to submit the necessary evidence. In a separate development letter of even date, it requested that the employing establishment provide comments from a knowledgeable supervisor regarding the accuracy of appellant's allegations and address whether he had been exposed to harmful substances at work.

In an undated report received February 21, 2018, Dr. Chary discussed appellant's evaluation on October 30, 2017 for multiple pulmonary emboli. He advised that a lymph node biopsy performed November 29, 2017 had revealed Valley Fever. Dr. Chary diagnosed disseminated coccidioidomycosis, pulmonary coccidioidomycosis, and coccidioidal osteomyelitis, or “severe and widespread Valley Fever,” which he noted included infections of appellant's pulmonary system and bones. He related that Valley Fever was endemic in certain areas of the United States, including where the appellant worked in San Joaquin Valley and that certain

³ 5 U.S.C. § 8101 *et seq.*

demographics, including South East Asians, Native Americans, or African-Americans, had greater risk for a serious form of the infection. Dr. Chary related:

“Infection can occur with even minimal exposure, though a severe presentation such as this strongly suggests that a heavy inoculum occurred, that is, that [appellant] may have been exposed to a large volume/amount of fungal organisms. [Appellant] notes that he was digging in the soil for work, and that construction has actively been ongoing in his workplace, in the months preceding his illness. This is the type of heavy, soil-based exposure that classically can cause or predispose someone to *Coccidioides* infection, and specifically severe infection.”

Dr. Chary advised that he was strongly concerned about workplace exposure given appellant’s heavy work exposure to soil-based organisms and the fact that other employees had been contemporaneously diagnosed with Valley Fever. He indicated that he had requested that the city public health department evaluate the workplace.

On February 12, 2018 appellant responded to OWCP’s questionnaire and related that he worked outdoors in a dusty environment loading and unloading materials with a forklift from a warehouse with open bay doors onto trucks. He related that the area where the land was disturbed was known to have Valley Fever. Appellant advised that he occasionally dug into the soil to put up tents and other equipment. He related that he worked outside in the dust all day and that he was unaware that he should have taken precautions to prevent the disease. Appellant related that two of his coworkers also had Valley Fever. He indicated that he had informed his supervisor that he felt sick on October 30, 2017 and sought medical treatment.

In an e-mail dated March 7, 2018, Dr. Corwin J. Hull, an employing establishment medical officer and Board-certified in occupational medicine, reviewed appellant’s claim. He noted that individuals in endemic areas had nonoccupational exposure to Valley Fever. Dr. Hull advised that occupations that put workers at risk for the condition required “extensive work in the outdoor environment and generally involve frequent/ongoing exposure to disrupted soil.” He related that most individuals experienced mild symptoms, but certain groups, including African Americans, had a greater risk of “the severe disseminated form of the disease.” Dr. Hull indicated that he was unaware of literature showing that “severe disseminated coccidioidomycosis is associated with exposure to a large amount of spores in the soil.” He disagreed that appellant had significant exposure to soil from digging tent poles into the ground compared to previous work-related cases where he characterized as far more significant exposure with soil.

In a letter dated March 7, 2018, the employing establishment controverted appellant’s claim, alleging that he had not factually established occupational exposure to Valley Fever. It advised that from October 2016 through January 2017 he had only worked four hours digging in the soil, and that he had been reassigned on September 3, 2017 to a position in the warehouse and not subject to any work that would have disturbed the soil.

In a separate letter of even date, the employing establishment advised that it was unable to comment on appellant’s contention that the land around his workstation was disturbed or that he worked in a dusty environment as he had not identified specific dates. It provided a position description and noted that he worked both inside and outside. The employing establishment

asserted that appellant had not done any digging since January 2017, which it maintained was outside the latency period of one to three weeks for Valley Fever. It indicated that it could not comment on whether appellant was outside most of the day as he had failed to adequately describe his work activities, and noted construction projects used wet methods on the soil so that there was no visible dust.

By decision dated March 8, 2018, OWCP denied appellant's occupational disease claim. It found that he had not factually established employment-related exposure to Valley Fever. OWCP concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

On March 26, 2018 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review. On June 25, 2018 his counsel specified that he wanted a telephonic hearing.

On May 29, 2018 the Department of Labor's Occupational Safety and Health Administration (OSHA) informed appellant that it had investigated his complaint that employees in warehouses were exposed to soil and dust that might be causing Valley Fever, that there was no warning or protective equipment provided, and that three employees had become sick since October 2017. It advised that its inspection had revealed "that a policy or program was not developed for employees during the planning of any construction work in coccidioidomycosis-endemic region to prevent occupational infections and outbreaks of Valley Fever." OSHA asserted that it had issued an alert letter to the employing establishment on the same date.

In a report dated June 25, 2018, Dr. Chary described appellant's treatment for Valley Fever beginning October 30, 2017. He related that his work duties, including digging in soil and being around construction, could predispose an individual to severe infection. Dr. Chary again advised that he had reported his concern that appellant had developed the condition at work to the public health department.

In an undated letter received by OWCP on July 2, 2018, Dr. Chary advised that while he could have also have been exposed to *Coccidioides* in the area of his residence, "given his work is in an endemic and the severity of the disease, as well as his reported history of heavy exposure to potential soil-based organisms and reports of other employees in his workplace diagnosed with this same infection in a similar timeframe," he believed it was caused by workplace exposure and released appellant to resume work on July 9, 2018 in an indoor environment to prevent reexposure to the fungus.

A telephonic hearing was held on August 14, 2018. Appellant testified that he had no nonindustrial exposure to construction and that he performed no gardening, dirt biking, or hiking. He indicated that he was African American. Appellant described his work duties, noting that he spent the majority of his time outside driving a forklift offloading material from trailers and flatbeds. He related that the employing establishment continually demolished and rebuilt warehouses and that his work location had open bay doors. One year earlier the employing establishment had dug up old railroad tracks close to appellant's work location. Appellant related that he dug into the ground using shoves, picks, and jackhammers to place stakes in the ground for tents. He further testified that, within six months of his diagnosis, four of his coworkers who

worked in his area contracted Valley Fever. Appellant challenged the employing establishment's assertion that he had only dug for four hours, noting that he worked for two weeks putting up tents sometime in 2017.

Thereafter, OWCP received a May 2, 2018 statement from D.D., a coworker, who advised that he had become sick with Valley Fever in October 2017. Another coworker, J.O., indicated that he was diagnosed with Valley Fever in April 2018.

In an e-mail dated June 12, 2018, C.S., a safety specialist with the employing establishment, advised that all employees were exposed to dust during their work shift from the wind primarily due to the surrounding agriculture activities. He denied that employees performed digging or soil disrupting activities. Some operated forklifts outside the warehouse. A small number of employees used mechanical devices to drive metal stakes into the soil, which C.S. maintained produced minimal dust.

In a July 13, 2018 letter, OSHA advised appellant that it had investigated his complaint that employees of the employing establishment were exposed to soil and dust that might cause Valley Fever. It found that the employing establishment had failed to warn or to develop a program to prevent outbreaks of Valley Fever during construction work and indicated that it had issued a Hazard Alert Letter (HAL) to the employing establishment.

In a July 13, 2018 letter, OSHA informed the employing establishment that four cases of Valley Fever had been diagnosed in its employees in the last year and eight cases had been diagnosed since 1993. It asserted that the rate of Valley Fever in the general population was 25.3 cases by 100,000 people, but that the equivalent rate at the employing establishment was 571.00 per 100,000 people. OSHA recommended actions for the employing establishment, including making workers aware of the risk, providing training, minimizing soil disruption, implementing control methods to reduce airborne dust exposure, cleaning equipment, and providing a room for workers to change clothing.

In an undated statement received August 30, 2018, S.R., a distribution process supervisor, advised that he supervised employees in warehouses and that he and his supervisees "handle material that comes in very dusty/dirty." He maintained that his work location had "multiple construction taking place inside warehouses and in the open which cause dust and dirt to fly around." S.R. advised that there was construction in a warehouse in December 2017 and that he was diagnosed with Valley Fever in January 2018.

Appellant submitted literature indicating that the time between primary coccidioidomycosis and disseminated coccidioidomycosis usually occurred "weeks to months after the initial infection...." He also submitted an article advising that Valley Fever cases had increased in the area in 2017.

In a letter dated September 11, 2018, the employing establishment asserted that appellant's work exposure was outside the latency period for contracting the disease, which appeared one to three weeks after exposure. It noted that the alleged exposure from digging in the ground and construction and excavation around warehouses and railroad tracks, but advised that there was no exposure within the three-week latency period of the illness. The employing establishment noted

that in September 2017 appellant was assigned to operate a forklift and that there was no construction at the warehouse from September 17 to October 27, 2017. It maintained that it had not received a HAL from OSHA.

In an e-mail dated September 11, 2018, S.E., an employing establishment human resources representative, described the construction activities that had occurred at the employing establishment from January to March 2017. She indicated that all construction activities used dust control methods. S.E. specified that from August 2016 to December 2017, 48 square feet were excavated as part of an elevator replacement project.

In a September 19, 2018 e-mail, Dr. Hull indicated that the incubation period for Valley Fever was approximately 7 to 28 days, though in an atypical case symptoms could become present months after exposure, but in that case the symptoms should be mild. He opined that appellant's exposure could not have occurred before September 27, 2017.

Thereafter, OWCP received an undated letter from appellant, who noted that disseminating Valley Fever had a different period for diagnosis. Appellant challenged the employing establishment's assertion that there was no construction at the employing establishment in July and August 2017. He maintained that during this time dirt was moved from one warehouse to two others, and that he knew this because he and the other employees had to find other areas to park vehicles due to the digging and soil movement. Appellant asserted that he performed almost all of his work outside and was continually exposed to wind and dust.

In an October 5, 2018 e-mail, an employee advised of the safety procedures the San Joaquin Command Team had implemented to prevent its workers from contracting Valley Fever, including warning signs, prevention methods, and dust and soil control methods.

By decision dated October 26, 2018, OWCP's hearing representative affirmed the March 8, 2018 decision as modified to show that appellant had been exposed to Valley Fever spores at work. He found, however, that the medical evidence was insufficient to support that he contracted Valley Fever due to exposure to the fungus at work.

In an addendum report dated November 5, 2018, Dr. Chary opined that appellant's operation of a forklift in an area with construction and disturbed soil two to three months before his symptoms of disseminated Valley Fever constituted "a heavy soil exposure history." He opined that high exposure to spores was more likely to cause symptomatic disease. Dr. Chary noted that the employing establishment had failed to provide appellant with a mask or other protective equipment and had not developed a program to prevent the illness until after he had contracted Valley Fever. He indicated that, based on the letter from OSHA, the incident rate in his workplace was five times higher than in the general population. Dr. Chary found that the severity of appellant's illness was "strongly suggestive of a high inoculum of inhaled fungus, as would be encountered with a high-level/large-volume disrupted-soil exposure." He related, "Based on above, it is within a reasonable degree of medical certainty that his workplace contributed to the coccidioides exposure that led to him developing severe and disseminated Coccidioides disease."

On November 14, 2018 appellant, through counsel, requested reconsideration.

In a December 11, 2018 e-mail, Dr. Hull challenged Dr. Chary's finding that appellant had exposure to high levels of dust and soil due to construction projects or that exposure to large amounts of spores caused symptomatic disease. He further disagreed that the employing establishment had no control measure in place to prevent exposure. Dr. Hull advised that a September 2018 indoor air quality survey showed particulates within acceptable levels. He asserted that the incident rate at the employing establishment for Valley Fever was not higher than in the general population if using a timeline from 1993 onward. Dr. Hull maintained that appellant was generally at risk for Valley Fever because he was African American.

By decision dated February 11, 2019, OWCP denied modification of its October 26, 2018 decision. It found that Dr. Chary's opinion was not based on an accurate history of appellant's exposure to dust and Valley Fever spores at work and was speculative and equivocal.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation period of FECA,⁵ that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁷

In an occupational disease claim, appellant's burden requires submission of the following: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.⁸

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.⁹ The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical

⁴ *Id.*

⁵ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁷ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁸ *R.M.*, Docket No. 18-0976 (issued January 3, 2019); *P.D.*, Docket No. 17-1885 (issued September 17, 2018).

⁹ *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388 (2008).

certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.¹⁰

ANALYSIS

The Board finds that the case is not in posture for decision.

OWCP accepted that appellant was exposed to Valley Fever fungus at work. It did not, however, specify the nature and extent of the exposure accepted. Appellant related that he worked outside using a forklift loading material from a warehouse with open bay doors onto trucks. He maintained that the area was windy and that there was construction at the depot and that the area was near farmland. Appellant asserted that he occasionally dug into the soil with shovels and jackhammers as part of his job duties, including for two weeks in 2017.

The employing establishment advised that appellant had not dug outside since January 2017. It indicated that it was unable to comment on whether the land around his workstation was disturbed or dusty or whether he worked outside due to his lack of specificity regarding dates. In a June 12, 2018 e-mail, C.S. asserted that all employees were exposed to dust from nearby agricultural activities and that a few employees used mechanical devices to drive metal stakes into the soil, producing minimal dust. In an undated statement, S.R., a supervisor, maintained that his subordinates handled dirty and dusty material and that multiple construction projects had occurred in the warehouses. On September 11, 2018 the employing establishment indicated that appellant had not been exposed to dust from construction and excavation within three weeks of his diagnosis.

OWCP, in denying appellant's claim, found that the employing establishment had sufficiently explained that Dr. Chary failed to base his opinion on an accurate history of his exposure to dust in the workplace. It also noted that the employing establishment had advised that he was not exposed to dust contemporaneous with his symptoms and that it had used adequate dust control methods. OWCP further noted that the employing establishment indicated that as an African American appellant was at increased risk for the disseminated form of the disease.

The Board finds that OWCP must further develop the medical record. OWCP relied upon the employing establishment's assertion that he was not exposed to dust from construction and excavation three weeks before his diagnosis, however, the latency period after exposure is a medical rather than factual question.

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. Although it is the claimant's burden of proof to establish his or her claim, OWCP shares responsibility in the development of the evidence and to see that justice is done.¹¹ On remand OWCP should prepare a statement of accepted facts and refer appellant for a second opinion examination to determine whether he sustained Valley Fever causally related to factors of his

¹⁰ *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008).

¹¹ *See J.V.*, Docket No. 17-0973 (issued July 19, 2018).

federal employment. Following this and any other development deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 11, 2019 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: September 24, 2020
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board